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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. ~~32~~ 4

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE.*

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THE UNITED STATES OF AMERICA,

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*.

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The undersigned, as counsel for the citizens whose names are hereto attached (Appendix A), respectfully move this Honorable Court for permission to file the accompanying brief, *amici curiae*. The attorney for the petitioner has consented to the filing of this brief.

Permission for leave to file has been requested from the Solicitor General of the United States. A copy of this request is hereto attached (Appendix B). The Solicitor General has not acceded to this request, on the ground that "the issue is a general one which has nothing to do with race or color."

We conceive the issues upon this appeal to bear vitally upon the Negro's search for that equalitarian dignity which

is whole citizenship. We are, for the most part, American Negroes who have no affection for the petitioner's politics; but we are concerned with his entitlement, as a Negro, to select any political party he wishes for his affiliation, as a matter of alternative freedom. It is the Negro's political alternatives in the light of his peculiar history with which this brief is primarily concerned. Both in emphasis and frame of reference, this is quite different from any position taken by the petitioner himself. Although it is true that the legal issue is theoretically general and untouched by race, as such, it is nevertheless true that Mr. Lightfoot, a Negro, is the first person ever convicted under the membership clause of the Smith Act. As such, he may be, though wrongly, thought to be a symbol of a new frustration of Negro efforts for civil equalities. Although the appeal of a white petitioner, Junius Irving Scales, will be heard as a companion case, the *amici* note that Scales was closely identified with the Negro's cause. The strong feelings of American Negroes, then, are not to be dismissed as a tenderness of sensitivity.

As is shown by the differing addresses of the proposed *amici* throughout the country, there is widespread interest and concern among Negroes in the Lightfoot appeal. Their necessity for dissent from antiquated restrictions and static concepts of the Negro's place and progress is embodied in this appeal and gives them a direct and genuine interest in the outcome of this case.

In a time when much political dissent is frowned upon and when restraints have tended to spill over into the freedoms which are both the tradition and basis of peculiarly American liberties, the Negro's concern is natural. Within Constitutional definitions, the Negro's dissent must remain constant until the democracy which allows his plaints is as color-blind as Mr. Justice Harlan declared

it to be in his *Plessy* v. *Ferguson* dissenting opinion (347 U. S. 483). We believe that our citations from the history which has touched us and which we, as Negroes, have affected, is a persuasive demonstration that American Negroes must have political alternatives or, perhaps, abandon all politics as an expression of dissent.

Our views are presented as non-Communists and as Negroes who are, principally, Democrats and Republicans.

A summary of the points to be made is contained in the index of the brief which is annexed hereto and made a part of this motion.

WHEREFORE, it is respectfully requested that this Honorable Court grant this motion to file the annexed brief as *amici curiae*.

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Supreme Court of the United States

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CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

UNITED STATES OF AMERICA.

PROPOSED BRIEF *AMICI CURIAE.*

Preliminary Statement.

This *Amicus Curiae* brief is submitted in the appeal of Claude Mack Lightfoot by American Negroes who are deeply concerned that justice should be untarnished by any prejudice and that the constitutional rights and civil liberties of all Americans should be held inviolate. The tragedy of the conviction of Claude Lightfoot as we see it lies in the restriction it imposes on the right of American citizens to avail themselves of political alternatives—the right of an American to select without fear of legal entanglements the political party with which he may desire to associate.

We *amici* believe that in the conviction of Mr. Lightfoot for membership in the Communist Party of the United States we are presented with a danger of immeasurable proportions to our basic constitutional freedoms of association, of assembly, and as well, of speech. In saying this we do not regard ourselves as protagonists of the philosophy of Communism, for that is not our intention.

We who are Negroes have been since first we reached these shores compelled by the realities of our position to seek political alternatives. We feel therefore that the

right of American citizens to invoke political alternatives must be held sacred and inviolate. For Negroes the right of way to a choice of political channels through which we sincerely believe we can arrive at the goals of freedom, a democracy embracing all with equal justice under law is holy ground. Each individual must not only have the opportunity to pursue happiness, but also to attain it.

In search of political alternatives the heroic Crispus Attucks and other Negroes, slave as well as freemen, found unity with the forces of George Washington and Thomas Jefferson, as opposed to the Tories; Negroes were the allies of the Abolitionists rather than the slave holders.

The right of freedom of choice has only been ours since Abraham Lincoln signed the Emancipation Proclamation and the Civil War (Thirteenth, Fourteenth and Fifteenth) Amendments to the federal Constitution were enacted.

We believe that the Lightfoot conviction proscribes that hard won freedom of political choice and this presents roadblocks to full citizenship along constitutional avenues. This point loses none of its vitality because other political parties than the Communist exist as alternatives. We believe that in meeting the challenge to any ism which may be conceived of as a threat to our way of life, the expansion rather than the restriction of constitutional liberties, civil rights and the deepening of respect for human dignity offers the greatest guarantee for tranquil domestic development. This is especially true if there exists any danger that the administration of law will be tainted by the injection of prejudice of creed or color. The cause of Negro Americans is a relentless pursuit of our country's constitutional ideals. Freedom, equality of opportunity for full participation in every phase of life in our country has for Negroes always necessitated the availability of alternatives. The very nature and framework of our political

system determines the need for the continued maintenance of conditions that permit freedom of choice to all seeking the objectives set forth in the Preamble of the Constitution.

The existence of those conditions which now makes attainable the magnificent promise of freedom upon which our government rests, the integrity and high prestige of this Court demand that we submit this brief as friends of the Court lest we be derelict in the performance of our duty as citizens.

Basic to, and inherent in the existence of alternatives is freedom of choice, and central to freedom of choice is the right to associate with those who support and/or have created that choice. The tragedy of the Lightfoot conviction is its intimidation, both of the Negro people and the democracy his freedom must inevitably advance. To limit freedom of choice in the selection of political alternatives is in this instance to do violence to our traditions and to vex the rights which must make our democracy the conscience of liberty.

We live in a world in which the dignity of the human being, his fundamental rights and the spiritual values of mankind are seriously threatened from many sides. Some of these despoilers are Americans who in their relations with the Negro people constantly outrage the best traditions of liberty and American democracy. We unqualifiedly believe that our country must safeguard and advance the noblest ideals of American history against all enemies within or without; that it must become the stronghold of man's freedom and the champion of his dignity.

We see in the ceaseless struggles of American Negroes for a realization of all that the American heritage of participation in all the processes of democracy and the freedom implies the endless dream of black folk for full development of our industrial and cultural life. This we

believe is good for our country's growth and its prestige before the world. There is a thread of historical continuity running through the Negro's struggles of yesterday and today, as diverse as they have been, that makes them all an aid to the enlarging patterns of freedom. Now is the time for America to realize the fondest hopes and aspirations of all of its people. The whole world moves forward toward greater freedom and our country is a part of and not apart from that world.

Therefore, every vestige of the cult of white supremacy, whether expressed in "separate but equal" decisions which imply our inherent inferiority and violate constitutional liberties, or otherwise, must be democratically but nonetheless determinedly brought to an end. This is a judicial, a legislative and administrative responsibility of government that cannot be evaded.

Almost every branch of the American church has in the present period shown remarkable initiative in calling for moral regeneration in the realm of race relations. The President's support for civil rights, the favorable position of various political leaders of all political persuasion and most pronounced of all the historic stand taken by this Court in its magnificent May, 1954 desegregation decisions (*Brown* v. *Board of Education*, 347 U. S. 483), these events are signs-of-the-times. They open up a vista, a new horizon for civil liberties, civil rights and human dignity that eclipses by far the frenzied efforts of those who would hold back the clock of advancing humanity. Yet we realize that the pressure of those who form the cult of the white supremacist or through their silence support it is great indeed. It is, however, with our faces turned toward this dawning new day for American democracy that we attach our names to this document and make of it another testimonial to the will of the Negro people to attain the goals

of dignity and freedom their heroic forefathers set for themselves and their posterity.

This is essentially a Negro community brief, signed in a spirit of non-partisan cooperation by men and women of differing political views and social and religious backgrounds.

The conviction of a Negro for having chosen the political alternative of a Communist promise, when life as it unfolds for him brings him rightly or wrongly to the conclusion that all others have failed, clothes the choice itself with criminal intent[1] in the place and stead of the time-honored presumption of innocence. By this proscription the Negro's alternatives are reduced to the direction of others, and the directors are those whose political failings induced his lack of faith. His allies in cause are reduced to penury and woe as well.

The jury was instructed at the close of the Lightfoot trial that he could not be found guilty simply because he was a Communist or an officer of that party. Guilt under the statute could be found, if at all, in Lightfoot's knowledge that he was a member of an organization of persons assembled "to teach and advocate the overthrow and destruction of the United States by force and violence, as speedily as circumstances would permit."

Lightfoot's conviction rests upon that hostility to ordered affairs which is said to be guilty knowledge. The facts are that Lightfoot is not accused of a single act of violence nor is he charged with disturbing the peace or threatening the foundations of government. The vitals of that shapeless quality, that intangible *guilty knowledge* is a process of thought which at some unascertained point

[1] As we shall show *infra*, a Negro may join the Communist or any political party for a variety of reasons, all of which may be completely unrelated to "the overthrow or destruction of (the) . . . government in the United States by force and violence . . ."

in the mind is calculated to have tainted Mr. Lightfoot's brain with an understanding that the Communist Party was a cabal of those who were bent on the forcible and violent destruction of our government "as speedily as circumstances would permit."

What the favorable circumstances would be in which the overthrow might take place are not defined by the statute; nor is there any evidence in the record describing such circumstances. Must the defendant have a hand in creating the circumstances? The record is barren of any proof that the defendant did anything towards that end. Or, does the Government contend that the circumstances permitting the overthrow of the Government would be created by someone other than the defendant, or by something beyond his control? No one knows.

A statute so vague in its meaning is invalid; an indictment based on such a statute is insufficient in law and cannot support a conviction. The unashamed purpose of the statute in question is to place the brand of criminality upon ideas with which the legislators disagree and to prevent political action in furtherance of such ideas. The Congress has no power to enact such laws. Tampering with the free flow of ideas and preventing their acceptance by the people is not a proper Congressional function. Having passed such a measure, this Court should declare it null and void.

This then is an indictment and conviction for a supposed act *in futuro* with punishment provided *in presenti*.

The jury's task was to speculate on thought processes in an area removed from any theory of "clear and present danger." A fundamental answer to the speculative membership clause of the Smith Act would seem to be found in Article 1 Section 9 of the Constitution which bans the bill of attainder and the *ex post facto* law.

If laws which are retroactive in penalty are unconstitutional, how much more perilous to the Constitution is a law which convicts today on the supposition that a crime may be committed at some indeterminate tomorrow. More than that it must be said of the Communist Party regardless of one's abhorrence of it that its announced program extended far beyond the allegation that it stands for the forcible overthrow of government at some indefinite historical moment. We must in self-protection and in order to maintain our own right to seek alternatives hold that in the ordeal of Claude Lightfoot we have witnessed ideas at the stake and a trial of liberty itself in the dread cause of limiting thought.

One need hold no brief for the Communist Party to speak for Claude Lightfoot's right of choice, a choice consistent with his estimate of the political situation. Claude Lightfoot, as a Negro, may have become a Communist for many reasons none of them associated with force and violence but rather conditioned by his desire to combat the force and violence he had himself encountered and which he saw almost daily employed against his people. The vexing danger inherent in the inferences drawn to support his conviction can only be deeply disturbing to many Negro Americans.

The history of Lightfoot as reviewed by the brief of his counsel reveals a central preoccupation with the dream of full and complete citizenship for Negroes. Unless we are to create presumptions of guilt flowing from the teachings of certain books and the advancement of unpopular political theories; unless we are to say to Negro Americans that they must find their solace and salvation solely in the promises of the major political parties of our country, the conviction of Lightfoot must be reversed. If we do not reverse this conviction, then those who deprive Negroes

of their constitutional liberties and civil rights may also arbitrarily dictate to their victims the political organizations in which they may function. That is already occurring in the case of the National Association for the Advancement of Colored People which is being outlawed in certain states because of its persistent defense of the constitutional rights of Negroes.

We are not mind readers. But we cannot accept from the mouths of paid informers or the lips of faceless men the reasons that motivate men seeking an alternative.

Claude Lightfoot could very well have been moved toward the Party he selected by virtue of the existence of such conditions as those of which President Harry S. Truman's Committee on Civil Rights, headed by Charles E. Wilson, then President of General Electric, wrote about in that amazing document entitled, *To Secure These Rights* (Simon and Schuster, New York 1947).

There we find recorded by men whose political integrity has never been in question these facts:

On the administration of justice:

> "The different standards of justice which we have allowed to exist in our country have had further repercussions. In certain states, the white population can threaten and do violence to the minority member with little or no fear of legal reprisal."

On "The Right to Vote":

> "The denial of the suffrage on account of race is the most serious present interference with the right to vote."

On job discrimination:

> The final report of FEPC states that "the wartime gains of Negroes * * * are being lost through an unchecked revival of discriminatory practices."

On discrimination in private schools:

> "Certainly the public cannot long tolerate practices by private educational institutions which are in serious conflict with patterns of democratic life sanctioned by the overwhelming majority of the people. By closing of the door through bigotry and prejudice to equality of educational opportunity, the public is denied the manifold social and economic benefits that the talented individual might otherwise contribute to our society."

On segregation:

> "• • • it brands the Negro with the mark of inferiority and asserts that he is not fit to associate with white people."

Or perhaps Mr. Lightfoot was deeply affected by that quotation taken by the President's Civil Rights Committee from the famous dissent of Justice Harlan of Kentucky in the case of *Plessy* v. *Ferguson* (163 U. S. 537). It was there that Justice Harlan "denounced his colleagues for the manner in which they interpreted away the substance of the Thirteenth and Fourteenth Amendments."[2] In this magnificent dissent with which this present Court in its May 17th, 1954 desegregation came to agreement, Justice Harlan said:

> "Our Constitution is color blind, and neither knows nor tolerates classes among citizens • • •
>
> "We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens, our equals before the law. The thin disguise of 'equal' accommodations • • • will not mislead anyone, or atone for the wrong this day done."

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[2] *To Secure These Rights*, The Report of the President's Committee on Civil Rights, p. 81.

Then the Committee added:

> "If evidence beyond that of dispassionate reason was needed to justify Justice Harlan's statement, history has provided it. Segregation has become the cornerstone of the elaborate structure of discrimination against some American citizens."

The "state of law" which practically, as Justice Harlan said, "puts the brand of servitude and degradation upon a large class of our fellow citizens" is changing. But Mr. Lightfoot might well have desired a balance consistent with our government of three equal parts, a balance which would see the Legislative and Executive branches of government keeping step with the changing law.

We are moving now toward the alleviation of these evil conditions. But the psychological effect upon a Negro of years of broken promises must be advanced in support of one who seeks a political alternative which is his constitutional right although his choice runs contrary to what in our thinking may be proper.

Because of these deep beliefs and the concern for the future of our country to which they give birth, we seek consent as friends of this Supreme Court to intervene as members of the Negro community of the United States. We *amici* believe that the conviction of Claude Lightfoot impairs the alternatives which of right we may claim. Freedom of association and assembly should not be stifled nor should one judge lightly as to why an alternative is invoked. If such freedoms perish, the Republic itself must topple from within.

The Statute Involved.

The indictment to which Claude Lightfoot entered a plea of not guilty, is based upon an Act of Congress found

in Section 2385 and Title 18 of the United States Code. It says, in pertinent part, as follows:

> "• • • Whoever organizes or helps or attempts to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow or destruction of any such Government by force or violence, or becomes or is a member of, or affiliates with any such society, group, or assembly of persons, knowing the purpose thereof" [shall be punished].

The quoted language is from the statute commonly known as the Smith Act.

ARGUMENT.

I.

The Negro's justification in selecting alternatives in politics finds much historical precedent and justification. In joining the Communist Party, petitioner, in any event, manifested the right to make a choice among competing political philosophies which is secured to him by the First Amendment of the Federal Constitution and which no statute or decision can make illegal, criminal or punishable.

The defendant conceded at the trial his membership in the Communist Party and that he was one of its officers. Prosecuting counsel then offered in evidence recitals of teaching posts held by Lightfoot and the texts of the courses taught. From this the jury was permitted to infer, and the Court of Appeals has confirmed, that Lightfoot's engagement in dangerous talk and teaching, his associa-

tion with other Communists, spelled out that quantum of sufficient guilty knowledge which breaches the Smith Act.

Let us put aside the question of a sovereign's right to prosecute ideas and to define what is pure and what is contaminated knowledge. It has been said, for example, in *Schneiderman* v. *United States*, 320 U. S. 118, 136, that:

> "• • • men in adhering to a political party or organization do not subscribe unqualifiedly to all its platforms or asserted principles."

This was said in the case of a white Communist leader. We ask, should it be less true of a Negro Communist, through inferences or otherwise? No speculation should be tolerated to separate Lightfoot's Negro allegiance to the principles of a party which declares for unqualified equality from some ominous concept which is vaguely defined as "guilty knowledge."

> "Sympathies and beliefs and what they mean to different individuals involve concepts that are highly nebulous and speculative at best. I presume a person could sympathize with a belief and yet still not believe. To probe the mind in a situation like this would give rise to nothing more than sheer speculation on the part of the prober." (*United States* v. *Lattimore*, 112 Fed. Supp. 507, 516.)

These are universal admonitions and they have a special application to the Negro citizen and his justification for political dissent. Having had his political faith abused by orthodoxy, his dissent is not only warranted, it is necessary to dignified existence. The liberties embedded in the Constitution for all, are both a sufficient reason and a sufficient protection for any unorthodoxy of speech and association. (*Cf. Wieman* v. *Updegraff*, 344 U. S. 183, 193 —concurring opinion of Mr. Justice Black.)

(a) The Negro's Political Frustration (1863-1956)

In 1955, Thurgood Marshall, Special Counsel to the National Association for the Advancement of Colored People observed that:

> "Although almost a century has elapsed since the Civil War and the abolition of slavery as an American institution, the transition of the Negro from a slave-chattel to a full fledged free American citizen has been painfully retarded."[3]

The fact is that things are as Justice Harlan almost prophetically said they would be.

The compulsion which led to Thurgood Marshall's statement is a matter compounded of elements of slavery, abolition, Civil War, Reconstruction and all of the political years since. The Negro's political allegiance, in the main, has wandered from one to the other of the two major parties and to a lesser degree to other parties which have appeared upon the political horizon. Yet constitutional fulfillment faces generations of pro and con legalisms and disputes over the very amendments to the Constitution which were long ago thought to have guaranteed the very rights sought in the continuing contest for equality. Now men question whether the Fourteenth Amendment was ever ratified. (*United States News And World Report*, July 16, 1956).

We do not here seek to promote the prestige of any political party. We cannot conceive these as issues here.

Because the right of alternatives is at stake we do find it necessary in its defense to recount some events in the history of our country and of the Negro's ceaseless efforts to improve his status.

The struggle for equality of opportunity was joined many years ago. In 1887, William H. Johnson, a Negro of

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[3] Edwin S. Newman, *The Freedom Reader* (1955), p. 205.

Albany, New York, was elected a member of the Republican State Committee. He said at that time, that Negroes:

> "* * * are today (1887) against the National Democratic Party, handicapped as it is by the Bourbon South, the old Pro-Slavery South and not the new. We are to a man with the Grand Old Republican Party of today, because that stands as firmly for equal rights for all today as it did for the abolition of slavery in 1860."[4]

Indeed, the Republican Party had been organized for the express purpose of limiting the expansion of the slave power. The meaning of slavery and the moral imperatives of the abolitionists had a tremendous impact upon the political thinking of the times. The contending parties of that era were the Whigs and the Democrats. The Republicans were just beginning to emerge. Later, the Populists were to come, the Free Soil Party, the Progressives and the Bull Moosers.

The Whigs were identified as the party of privilege and as conservatives. It was when the conservatives gave "verbal assent" to the reform programs urged by the so-called Farmers' Alliance, and then failed to keep their promise, that "the farmers hastily organized a third party, the Populists, and went into all-out revolt against the conservatives."[5] Thus, we find early precedent for the search for other alternatives.

C. Vann Woodward, professor of American history at Johns Hopkins University, had this to say in an article entitled "Young Jim Crow" which appeared in the *Nation*, June 7, 1956:

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[4] Republican Greeting to 25,000 Free and Loyal Colored Voters of The State of New York, 1887-88 (Schomburg Collection, N. Y. City Public Library.)

[5] C. Vann Woodward, *The Strange Career of Jim Crow* (1955), p. 60.

> "After Reconstruction was overthrown, the South retained such segregation practices as had already been established, but showed no immediate disposition to expand the code into other fields. Nearly a generation was to pass before segregation became the harsh, rigid and universal system that emerged in the twentieth century."

One of the giants of the early Negro struggle for citizenship and the full realization of that status as an American, was Frederick Douglass. In a letter dated October 6, 1887, he wrote of the Democratic Party as follows:[6]

> "But that party is altogether too slow of foot, too heavily burdened with its ugly record and the Solid South to be safely trusted to lead in the cause of liberty, enlightenment and progress."

Thus we see that so soon after slavery as 1887, the lines of debate were being drawn and whatever hopes the Negro may have been induced to place in the Democratic Party were already subject to disillusionment. We cite this event only to trace the course of history.

In the light of what many view as abandonment of the Negro by the major political parties through the Hayes-Tilden Compromise, it is little wonder that so many Negroes have always looked for alternatives to accomplish their objective. Neither should there be over-much of wonder that, in the sometime competition for his vote, the Negro tends to analyze and compare, before he affiliates.

Basic to the problem at hand, is whether a Negro should be penalized and tainted as a criminal when he associates with a political party, despite the fact that the powers that be attack it fiercely, that has made an unqualified promise to aid in the Negro's contest for equal status.

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[6] Schomburg Collection, New York City Public Library.

Writing in 1886, T. Thomas Fortune, a Negro and the then editor of *The New York Freeman*, noted that:

> "The history of the race since 1865 should teach us that there is no more tricky and slimy thing in the catalogue of duplicity and cowardice than the average politician; and yet we • • • hasten to brand as a traitor any man of us who has the intelligence and the courage to protest against the broken promises, the sugar-coated capsules of political mountebanks."

It was a matter of record, he continued that the Negro's voting strength had been "neutralized since 1876 by the very party (Republican) they serve with such blind zeal and devotion."[7]

It took a long time for the Negro to reach the political maturity which tolerates disillusionment with the respectability of membership in the major parties to which emancipation had entitled him. At one point in history, almost nine-tenths of the Negroes then in America, accepted as the "alpha and omega of sentimental politics," the dictum of Frederick Douglass that "the Republican Party is the ship; all else is the ocean."[8] In somewhat cooler criticism of this extravagance, Mr. Fortune wrote in his *The Negro In Politics* (p. 28) that:

> "There is no other race beneath the sun which would be satisfied with the contemptible status we occupy in politics of the country without showing signs of restlessness and discontent."[9]

He concluded his essay with the opinion that, for Negroes, the major parties were "instruments of tyranny" which had ceased to "represent progressive justice."

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[7] Fortune, op. cit., p. 11.

[8] T. Thomas Fortune, *The Negro in Politics*, p. 28.

[9] T. Thomas Fortune.

In the 1920's, a number of Negroes, dissatisfied with the "indifferent attitude of the Republican Party toward enforcement of the Fourteenth and Fifteenth Amendments to the Constitution, and other grievances have gone over to the Democratic and Socialist parties."[10]

By 1930, the stimulus of the ideal which created the Republican Party, had waned. The trend had begun for the Negro towards a kind of political independence which no longer followed party labels, but "men and issues."[11]

Some Negroes, in search of political alternatives to the two major parties, advocated a coalition with labor as a way out.[12] William F. Nowlin advised that alignments should be made with other groups when profitable.[13]

Within the framework of this historical data must be found the meaning of any Negro's political disaffection and his search for alternatives which may reflect his political maturity although his choice may be distasteful to many of us.

We believe that the Negro citizen like his white brother has—and must be protected in—the constitutional right to: a) support either of the major political parties; b) shift from one party to the other; c) move outside of either of the two major political parties. This, indeed, has been his political history. The intellectual revolution which liberated Negroes from their blind fealty to any political party has made them see the necessity for protest against the orthodoxy which has seen almost a century pass without the guarantees of the Constitution having become more

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[10] Wm. F. Nowlin, *The Negro in American National Politics* (1931), p. 135.

[11] Elbert Lee Tatum, *The Changed Political Thought of the Negro, 1915-1940* (1951), p. 184.

[12] *The Washington Tribune*, editorial by L. M. Murray, May 30, 1930.

[13] Nowlin, op. cit., p. 143.

than a matter of argument and the urging of nice distinctions.

To penalize a Negro for his political affiliation, is to remove a constitutional ally from the arena where freedom is won and preserved. For, in the conviction of Lightfoot we find a *caveat* to all Negroes who would dissent and a threat to any white citizen who might wish to identify with that dissent.

Is not the conviction of the Negro citizen, whose total biography reveals a search for racial dignity a prohibition against foment and unorthodoxy? But, we are reminded:

> "Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more poeple than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost." (Concurring opinion of Black, J., in *Wieman* v. *Updegraff*, 314 U. S. 183, 193.)

And we recall the admonition to people of good will expressed by Mr. Justice William O. Douglas when speaking before the American Law Institute. As reported by the New Republic, November 16th, 1953, he observed that America's

> "growing tendency in the interests of security to take short cuts to disregard the rights of the individual, to sponsor the cause of intolerance, and to adopt more and more tactics of world forces we oppose * * * have helped lose for America the commanding position of moral leadership which we had at the end of World War II."

We cannot refrain from the comment that much of this loss was due to the prevalence of racism in our country.

Unorthodoxy is hardly a new concept for Negroes of political awareness. In 1912, "for the first time since his enfranchisement • • • sixty per cent of the effective colored votes went to the Progressives."[14]

Frederick Douglass commented on the inauguration of Grover Cleveland and the alarm and consternation which that event caused in "every black man's cabin" in the South:[15]

> "The Democratic Party had, in its day, done much well calculated to create a dread of its return to power. In the old time it was the ever-faithful ally of the slaveholders and the inflexible defender of slavery. In the New Time, it has been distinguished as the party of the shot-gun, the cat-whip and the Solid South."

It was said, also, that:

> "Andrew Johnson once claimed to be the Moses of the colored people, but no sooner did he get the power, through the assassination of Lincoln, than he forgot the Negro • • •."[16]

When Woodrow Wilson was elevated to the Presidency as a Democrat, many Negroes believed that, at last, the White House was being graced by an intellectual and a political philosopher too learned in the science of democracy to yield to any diminution of the Negro's liberties. Yet:

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[14] Kelly Miller, *The Political Plight of the Negro*, Vol. 1, No. 2, p. 3 (1913).

[15] *The Afro-American Budget*, Vol. 1, No. 2, June, 1889, "The Future of the Race," p. 39.

[16] J. Mercer Langston, from a speech delivered at Saratoga, N. Y. on August 2, 1872, Manuscript documents, Schomburg Collection, N. Y. C. Public Library.

> "President Wilson's executive order establishing segregated facilities for colored federal employees, together with the flood of discriminatory legislation introduced in the first Democratic Congress, made Negroes suspect that the New Freedom offered them little that was new and little that was freedom. * * * the hopes that Theodore Roosevelt's friendship had raised among Negroes at the beginning of the new century had faded some time before. * * *"[17]

It is typical of any year that the daily press can report that civil rights legislation, for example, fails of passage by the device of the filibuster.

Sectional justice, Executive passivity, as well as the legislative filibuster are among the factors which compel a Negro to search for alternatives outside as well as within the major political parties and to look for aid from those whose view of the Constitution's fabric of freedom is unqualified. Claude Lightfoot might very well believe that there should be more concern for a full extension to Negroes of Constitutional equality and less anxiety about the "South's emotions."[18]

Many regard as almost incredible that the conscience and the morality of the abolitionist movement, begun over a century ago, which resulted ultimately in the theoretical enfranchisement of the Negro, has had so little effect upon the parties controlling the federal government. That some Negroes would look for another party to fit the shape of their dreams can be readily understood.

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[17] Samuel R. Spencer, Jr., *Booker T. Washington and the Negro's Place in American Life* (1955), pp. 171-172.

[18] "The President repeated the appeal he made a week ago for moderation on the racial issue, and understanding of the South's emotions" (N. Y. Times, 3/22/56).

II.

The membership clause of the Smith Act is unconstitutional on its face and, as applied, is violative of the First Amendment to the Constitution.

The single count indictment and the conviction based thereon both flow from the pernicious and discredited doctrine of "guilt by association." The petitioner's culpability under the Act is said to be found in his membership in the Communist Party, while knowing that "the purposes thereof" were concerned with the violent and forcible overthrow of the United States Government so soon as circumstances might permit. It was this so-called "guilty knowledge" which forms the gravamen of the charge and the structure of the rationale which has upheld the conviction.

Since no overt act of violence is alleged and no hostile conspiracy is suggested, the case appears to have been tried upon a theory that Claude Lightfoot's membership in the Communist Party and his association with other members, supplied whatever guilty knowledge of unascertained future violence was required under the Act. To define such association as a criminal act sufficient for indictment and conviction runs counter to our most ancient concepts of civil law and is clearly at war with the traditional concepts of our criminal jurisprudence.

> "• • • under our traditions beliefs are personal and not a matter of mere association, • • •" (*Schneiderman* v. *U. S.*, 320 U. S. 118, 136).

We believe that guilt, too, is personal and that freedom of speech, conscience, inquiry and assembly, when restricted or punished, is an abuse of the Constitution, in the absence of that "clear and present danger" to our Government

which Mr. Justice Holmes mentioned in *Schenck* v. *United States*, 249 U. S. 47. We do not suggest, in any event, that the "clear and present danger" test serves "to mark the furthermost Constitutional boundaries of protected expression," for we believe that it does "no more than recognize a minimum compulsion of the Bill of Rights." *Bridges* v. *California*, 314 U. S. 252, 263.

Crucial to any analysis of the argument here is the monition to notice that there is neither charge nor evidence of any incitement to riot or violence. Absent from the record, also, is the imputation or evidence that Lightfoot advocated terrorism, sabotage, spying or any of the other tactics so generally associated with sedition and revolution. The inescapable premise of his conviction, then, appears to be buttressed by nothing more than the jury's inferences that he was a political dissenter, espousing unpopular, radical and social doctrines. He has been prosecuted, then, for his ideas, not for his activities. He has been convicted of having read the "wrong" books and having taught from their uncensored texts, of having associated with the "wrong" people and of thinking the "wrong" thoughts.

In the course of the Negro's quest for undiminished citizenship and the rights which keep that prized status inviolate, political activity has played the indispensable role of conscience-prodder to the nation; it has been always important, though sometimes futile. In the tardy pursuit of happiness guaranteed to the Negro by the Thirteenth, Fourteenth and Fifteenth Amendments, the grandeur of the Constitutional dream has been made his in full. To utilize in every way the rights woven into emancipation and citizenship has been the most precise concern of Negroes during the nearly one hundred years since the American conscience rebelled against slavery. Negroes thus have a significant and vital stake in the preservation,

use and enjoyment of every right to protest freely against injustices, to air grievances and to compete in the marketplace of ideas.

We believe, as Mr. Justice Black has said:

> "* * * that the First Amendment is the keystone of our Government, that the freedoms it guarantees provide the best insurance against destruction of all freedom."
>
> *Dennis* v. *United States*, 341 U. S. 494—dissenting opinion.

The First Amendment was intended to protect those persons who, rightly or wrongly, feel aggrieved and wish to express and protest their disagreement and note their dissent. Its letter and spirit protect the soap-box orator, the lobbyist, the pamphleteer and those who have sought Negro dignity by a bus boycott in Montgomery, Alabama. So, also, was its matrix formulated to protect the political activity of Claude Lightfoot. To permit Congress to designate what political parties a citizen may or may not affiliate with in the exercise of his Constitutional rights, is to allow enforcement of political orthodoxy and to hold that the First Amendment protects only those who cleave to orthodoxy. To so hold would frustrate the First Amendment and make a mockery of the rights it defines as within its protection.

> "The Constitutional fathers, fresh from a revolution, did not forge a political straitjacket for generations to come."
>
> *Schneiderman* v. *United States*, 320 U. S. 118, 137.

And, as Mr. Justice Holmes has so well said:

> "* * * if there is any principle of the Constitution that more imperatively calls for attachment than any

other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

United States v. *Schwimmer*, 279 U. S. 644.

Ideas and speech hostile to the Government and its institutions are the very things that the First Amendment was intended to remove from the area of Congressional proscription. Ever zealous and proud to protect our precious democratic heritage, we concur with Mr. Justice Murphy and his reminder in *Schneiderman* v. *United States*, *supra* (320 U. S. 118) that:

> "• • • we should have a jealous regard for the rights of petitioner. We should let our judgment be guided so far as the law permits by the spirit of freedom and tolerance in which our nation was founded, and by a desire to secure the blessings of liberty in thought and action to all • • •." (p. 120).

We think pertinent the following portion of Mr. Justice Black's dissenting opinion in *Dennis* v. *United States* (341 U. S. 494), where he expresses the hope that:

> "• • • in calmer times, when present pressures, passions and fears subside, this or some later court will restore the First Amendment liberties to the high preferred place where they belong in a free society."

The search for dignity by American Negroes must of necessity lean heavily upon the very intendment of the Bill of Rights which was inspiration enough for the abolition of slavery and must be the spring-board to complete equality and that citizenship of the whole which is the bed-rock of democracy itself. It is the tradition of high preferment for our First Amendment liberties which makes our society free; and in turn, free society compels a preservation of those rights or directs its own suicide by the strictures which first limit and then destroy.

As Negro citizens, we dread the suggestion that a Negro who dissents and seeks political definition in unorthodoxy, commits a crime by his association and becomes a felon through the ideation of his dream of undiluted freedom. That dream is no less our own. For, in the peculiar nature of the Negro's deathless concern with matters of liberty and freedom, unless he dissents from diminution, unless he disputes his restrictions and unless his identification with libertarian progress be eternal, he may be thought to concur with those who would both restrict and limit his full participation in American life.

We submit that the case of Claude Lightfoot presents an excellent point for re-affirmation of the rights enshrined in the First Amendment and the restoration of the Amendment to its "high preferred place." A reversal will enlarge, rather than foreshorten, the Negro's constitutional liberties, while confirming the deep roots which civil rights have and must have in the concept of our democracy.

Conclusion.

Section 2385 of Title 18 of The United States Code, as applied and on its face is a bill of attainder and in violation of the First Amendment to the Constitution. The judgment of conviction should be reversed as a matter of law with instructions to the District Court to grant petitioner's motion to dismiss the indictment.

Respectfully submitted,

Bruce McM. Wright
Thomas G. Weaver
Livingston L. Wingate
Charles T. McKinney
Louis S. Maritzer,
Attorneys for *Amici Curiae*

Appendix A

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Appendix B.

August 1, 1956.

Hon. SIMON E. SOBELOFF
Solicitor General of the United States
Constitution Avenue, N. W.
Washington 25, D. C.

Dear Sir:

Re: *Claude Mack Lightfoot* vs. *U. S. A.*

In accordance with Rule 42 of the Revised Rules of the Supreme Court, I hereby request your consent to the filing of a brief *Amici Curiae* in behalf of a number of prominent Negro American citizens and others of divers political views. The nature of their interest can be put quite simply:

They believe that there are many issues in the *Lightfoot* case which bear vitally upon the Negro's search for that equalitarian dignity which is whole citizenship. Some of these issues are concerned with the continuity of the Negro's role in American political history. They are also extremely interested in the preservation of the letter and spirit of the First Amendment of the Constitution and the rights which it is intended to protect. Names and addresses of those who wish to act as *Amici* will be supplied if you so desire.

It is my belief that the provisions of Rule 2b would not be infringed by permission to file a Friend of the Court brief in behalf of representatives of America's Negro citizens. Mr. Lightfoot's counsel is extremely able and those vital points of law upon which the appeal must turn will doubtless be argued with great skill. But the proposed brief is concerned with the Negro's political alternatives in the light of his peculiar history. This is, both in emphasis

and frame of reference, quite different from any position taken by the appellant.

Because of the nation-wide interest among Negroes in the proposed brief, more time has been consumed than would be the case among Friends of the Court from the same area. It is therefore necessary that I ask, in conjunction with seeking your consent to filing that the time within which the proposed brief must be submitted be extended to the 10th day of September, 1956.

Very truly yours,

BRUCE MoM. WRIGHT,
of Counsel.

BMW:db

Appendix C.

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C.

[SEAL]

August 17, 1956.

BRUCE McM. WRIGHT, Esquire,
WEAVER, EVANS, WINGATE & WRIGHT,
160 Broadway,
New York 38, N. Y.

Re: *Lightfoot* v. *United States*, U. S. Supreme Court, October Term, 1956, No. 32.

Dear Mr. Wright:—

Your letter of August 1, 1956, requests consent to the filing of a brief *amici curiae* "in behalf of representatives of America's Negro citizens." You state that the "proposed brief is concerned with the Negro's political alternatives in the light of his peculiar history", and attach a copy of the proposed brief which stresses the history of the Negro in this country since the Civil War.

In the circumstances, I feel that I must decline consent. The petitioner in this case is a Negro, but the issue is a general one which has nothing to do with race or color; in fact, the petitioner in the companion *Scales* case is white. In my view, the disposition of the case by the Supreme Court would not be aided at all by the brief you propose to file.

Sincerely yours,

J. LEE RANKIN
J. Lee Rankin,
Solicitor General.

Appendix D.

August 20, 1956

OFFICE OF THE SOLICITOR GENERAL
Constitution Avenue, N. W.
Washington 25, D. C.

Re: *Lightfoot* v. *United States*, U. S. Supreme Court, October Term, 1956, No. 32.

Honorable Sir:

I am in receipt of your letter dated August 17, 1956, in which your refusal is noted to my request that you consent to the filing of a proposed *amici curiae* brief in behalf of several prominent Negro citizens.

You are entirely correct in your position that, although the petitioner is a Negro, "the issue is a general one which has nothing to do with race or color." However, I beg that you notice that many Negroes are disturbed by this case because Mr. Lightfoot was the first person convicted under the membership clause of the Smith Act and Mr. Scales, a white man, who stands similarly convicted, is a person whose work has been closely allied with the Negro's equalitarian cause. Thus, while I can quite agree that the theory of the Lightfoot and Scales appeals is general, the coast-to-coast feeling of many prominent Negro citizens is not. This, it seems to me, is the really important and basic factor to be considered in connection with the application for your consent. Who can say, for example, that the attitude of so many Negro leaders in their widespread communities will not have some effect upon the thinking of the Supreme Court. I submit that the attitudes of the Negro applicants here may be no less important than the psychological elements which the Court relied upon in unanimously deciding *Brown* v. *Board of Education*, 347 U. S. 483.

With this thought in mind, I respectfully ask that you be good enough to reconsider the denial of your consent to the filing of the proposed brief and consent thereto.

Very truly yours,

BRUCE MCM. WRIGHT.

Appendix E.

[SEAL]

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C.

August 21, 1956

BRUCE McM. WRIGHT, Esquire
Weaver, Evans, Wingate & Wright
160 Broadway
New York 38, N. Y.

Re: *Lightfoot* v. *United States*, U. S. Supreme Court, October Term, 1956, No. 32.

Dear Mr. Wright:

I have your letter of August 20th, in which you ask that I reconsider my decision not to consent to the filing of a brief *amici curiae* in the above case. I have given serious consideration to the arguments you present but I am unable to change my decision. As you undoubtedly know, you may apply to the Court for permission to file your brief.

Sincerely yours,

J. LEE RANKIN
J. Lee Rankin,
Solicitor General.